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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL ELLSWORTH WEEDMARK and CARL RAJSIC

Appeal 2009-006199
Application 10/699,786¹
Technology Center 2400

Decided: May 27, 2010

Before ROBERT E. NAPPI, KENNETH W. HAIRSTON, and MARC S.
HOFF, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The real party in interest is ALCATEL.

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-26. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention relates to Active Connection Modify (ACM) actions in communication networks (Spec. ¶ 01). The method includes determining whether the original connection must be torn down (Spec. ¶ 28, 29), and if so, switching the connection to the alternate connection before tearing down the original connection (Spec. ¶ 22).

Claim 1 is exemplary of the claims on appeal:

1. A method of implementing an Active Connection Modify (ACM) for a connection in a communication system, the connection initially lying along an original connection between a source node and a destination node, the original connection conforming with at least one original traffic parameter, the method comprising the steps of:
 - establishing an alternate connection between the source node and the destination node;
 - attempting to implement the ACM along the original connection;
 - determining whether the connection along the original connection must be torn down; and if the connection along the original connection must be torn down, switching the connection to the alternate connection before tearing down the connection along the original connection.

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Soncodi	US 6,111,881	Aug. 29, 2000
So	WO 98/49862	Nov. 5, 1998

Claims 1-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Soncodi in view of So.

Throughout this decision, we make reference to the Appeal Brief (“App. Br.,” filed January 16, 2008), the Reply Brief (“Reply Br.,” filed April 14, 2008) and the Examiner’s Answer (“Ans.,” mailed February 14, 2008) for their respective details.

ISSUE

Appellants argue that Soncodi does not teach determining whether the connection must be torn down (App. Br. 4-5). The Examiner finds such a determination to be inherently taught by Soncodi, in that Soncodi teaches rerouting as a result of many causes, including fault recovery (Ans. 4-5).

Appellants’ contentions present us with the following issues:

1. Does Soncodi teach determining whether the connection along the original connection must be torn down?
2. Does Soncodi teach that, if the connection along the original connection must be torn down, switching the connection to the alternate connection before tearing down the connection along the original connection?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

The Invention

1. According to Appellants, they have invented a method for implementing Active Connection Modify (ACM) actions in communication networks (Spec. ¶ 01, 11). The method includes determining whether the original connection must be torn down (Spec. ¶ 28, 29), and if so, switching the connection to the alternate connection before tearing down the original connection (Spec. ¶ 22).

Soncodi

2. Soncodi teaches a signaling method for rerouting ATM connections (col. 1, ll. 7-8).

3. Reasons for connection rerouting can include network failures, path optimization, load balancing, fault tolerance, and call priority (col. 1, ll. 65-67).

4. Soncodi teaches both preemptive and nonpreemptive rerouting. In nonpreemptive rerouting, the old route is cleared after a new route is established (col. 5, ll. 21-24).

PRINCIPLES OF LAW

On the issue of obviousness, the Supreme Court has stated that “the obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). Further, the Court stated “[t]he combination of familiar elements according to known methods is likely to be obvious when

it does no more than yield predictable results.” *Id.* at 416. “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent’s claims.” *Id.* at 419-420.

“It is well settled that a prior art reference may anticipate when the claim limitations not expressly found in that reference are nonetheless inherent in it. Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates.” *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349 (Fed. Cir. 2002) (citations and internal quotation marks omitted). “Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations and internal quotation marks omitted).

ANALYSIS

Appellants argue that the combination of Soncodi and So does not teach the invention recited in representative claim 1. According to Appellants, Soncodi does not teach determining whether the connection along the original connection must be torn down (“cleared,” in Soncodi’s lexicon) (App. Br. 4), as claim 1 requires.

We are not persuaded by Appellants’ argument, because we agree with the Examiner that Soncodi inherently teaches making such a determination whether the connection must be torn down. Soncodi teaches a signaling method for rerouting ATM connections (FF 2). Reasons for

connection rerouting can include network failures, path optimization, load balancing, fault tolerance, and call priority (FF 3). Soncodi teaches both preemptive and nonpreemptive rerouting, nonpreemptive rerouting being the type most correspondent to Appellants' invention, wherein the old route is cleared after a new route is established (FF 4). While Soncodi explains that "[p]referably, nonpreemptive rerouting occurs for reasons other than connection faults" (col. 5, ll. 24-25), such a preference does not amount to a teaching that nonpreemptive rerouting does *not* occur due to connection faults. The Examiner finds, and we agree, that Soncodi's determination of a network failure or connection fault amounts to an inherent teaching of a determination that the connection along the original connection must be torn down (Ans. 4-5). In the event of a network failure or connection fault, communication path rerouting, and concomitant tear-down of the defective connection, must necessarily occur in order to restore communications. Therefore, as noted *supra*, Soncodi's teaching of nonpreemptive rerouting, in which the old route is cleared after the new route is established, meets the claimed limitation of "if the connection along the original connection must be torn down, switching the connection to the alternate connection before tearing down the connection along the original connection," as recited in claim 1.

We thus agree with the Examiner's finding that Soncodi in combination with So teaches all of the elements of representative claim 1. As a result, we will sustain the Examiner's § 103 rejection of claims 1-26.

CONCLUSIONS

1. Soncodi teaches determining whether the connection along the original connection must be torn down.

2. Soncodi teaches that, if the connection along the original connection must be torn down, switching the connection to the alternate connection before tearing down the connection along the original connection.

ORDER

The Examiner's rejection of claims 1-26 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD

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